No. 22,180

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

v.

LENNARD L. MEAD; ALBERT CHUNN; A. V. HOHN; RICHARD QUINE; ALDEN JOHNSON; VIOLET MEAD; and RAY R. SENCE,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF AND APPENDIX FOR THE UNITED STATES

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I N D E X

C I T A T I O N S

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JURISDICTIONAL STATEMENT

The United States commenced this action on July 1, 1964, pursuant to 28 U.S.C. 1345 and 31 U.S.C. 231-233, to recover statutory forfeitures and double damages for violations of the False Claims Act, and to recover payments made by mistake.[1/] On April 18, 1967, the district court (Peirson M. Hall, J.),

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1/ The action also sought to enforce administrative claims for damages, but these claims are not at issue in this appeal.

after a non-jury trial, entered its judgment that the United States "recover nothing from any of the defendants" (Tr. 108-109). 2/ Notice of appeal was filed on June 15, 1967 (Tr. 110-111). This Court has jurisdiction of this appeal under 28 U.S.C. 1291.

STATEMENT OF THE CASE

A. The Agricultural Conservation Program

This case arises out of the United States Department of Agriculture's Agricultural Conservation Programs for 1957, 1 and 1959, administered by the Department pursuant to the Soi Conservation and Domestic Allotment Act, 16 U.S.C. 590a-590q (1958 ed.). The regulations governing the Agricultural Cons vation Programs for 1957, 1958, and 1959, are found, respect at 21 Fed. Reg. 5034 et seq., 22 Fed. Reg. 6428 et seq., and Fed. Reg. 5247 et seq. Under these programs, the United Sta shared with farmers and ranchers in the continental United States the cost of carrying out approved soil and water cons vation practices such as constructing erosion control dams a water diversion ditches on the farmers' or ranchers' lands. The maximum Federal cost-share for each approved practice wa to be "the percentage of the average cost of performing the

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2/ "Tr." refers to the Transcript of Record filed in this Co "Tp." refers to the district court reporter's Transcript of Proceedings, copies of which have been lodged with the Court

practice considered necessary to obtain the needed performance of the practice, but which will be such that the farmer or rancher will make a substantial contribution to the cost of performing the practice." 1959 Regulations, Section 1101.1011(a), 23 Fed. Reg. 5250. 3/ Thus, the farmer or rancher was required to pay that part of the cost of conservation materials or services furnished through the program for use in carrying out an approved practice which was "in excess of the * * * Federal cost-share" attributable to the use of the material or service. 1959 Regulations, Section 1101.1027(b), 23 Fed. Reg. 5252. 4/

In the case at bar, the Federal cost-share for approved conservation practices was to be the lesser of (1) a fixed percentage of the total cost of the practice (e.g., 80% of the total cost), or (2) a fixed price per unit of work performed (e.g., 30 cents per cubic yard of earth moved) times the number of units of work performed (Tp. 44-45, 48-49). In no event could the Federal cost-share per farmer or rancher per program year exceed an allowable maximum amount (e.g., $2,500) (Tp. 40).

Under the programs, the farmer or rancher first filed with the appropriate County Agricultural Stabilization and Conservation Committee a request for Agricultural Conservation Program cost-sharing (Form ACP-201). The County Committee approved the

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3/ Identical provisions are found in Section 1101.811(a) of the 1957 Regulations, 21 Fed. Reg. 5036, and Section 1101.911(a) of the 1958 Regulations, 22 Fed. Reg. 6485.

4/ Identical provisions are found in Section 1101.827(b) of the 1957 Regulations, 21 Fed. Reg. 5038, and Section 1101.927(b) of the 1958 Regulations, 22 Fed. Reg. 6486-6487.

request if it appeared to be proper, determined the maximum allowable Federal cost-share, and notified the farmer or ran accordingly. After completion of the approved practice, the farmer or rancher would file an application for payment (For ACP-245) with the County Committee for that portion of the c of the practice which the Government had obligated itself to pay. If the farmer or rancher had elected to have the Count Committee execute a purchase order for conservation material and services (Form ACP-250) to an approved contractor hired the farmer or rancher to furnish conservation materials or services (the purchase order plan), the contractor, rather t the farmer or rancher, would receive the Federal cost-share ment (Tr. 101-103; Tp. 26-43).

B. The Facts of the Instant Case

In the case at bar, various farmers and ranchers filed requests with the Ventura, California County Committee for Agricultural Conservation Program cost-sharing. The request were duly approved, and the practices were carried out by th defendant-appellee, Lennard L. Mead, a private contractor authorized by the Department of Agriculture to furnish conse tion materials and services under the purchase order plan. Following completion of the practices, the farmers and ranch filed with the County Committee applications for payment of Federal cost-shares supported by invoices to them prepared b Mead.[5/] In most instances, the Government paid the cost-share directly to Mead under the purchase order plan (see infra, pp.

5/ In this brief, we refer to defendant-appellee Lennard L. Mead as "Mead," and to defendant-appellee Violet Mead as "Vi

Following an investigation, the Department of Agriculture etermined that Mead's invoices overstated his actual charges o the farmers and ranchers for the materials and services he urnished in carrying out the approved practices, and that Mead nd the farmers and ranchers were aware of this when the appli- ations for payment of Federal cost-shares were filed (Tr. 105- 06). Thereafter, the United States commenced this action gainst Mead and certain of the farmers and ranchers to recover tatutory forfeitures and double damages under the False Claims ct, and to recover payments made by mistake (Tr. 2-32). 6/

. The Evidence Adduced at Trial

The defendant-appellee Mead testified that he knew that the ederal cost-share payments that he would receive from the overnment under the purchase order plan were "based upon the ost [to the farmer or rancher] of the project," and admitted hat "in some cases" he gave the farmers and ranchers a "cash iscount" and prepared simultaneously two invoices -- one for he Government, and another showing his discount for the farmer r rancher (Tp. 110-111, 140-141, 152-153). Mead stated that e usually sent a copy of the invoice he prepared for the overnment to the farmer or rancher, and that, at about the same ime, he also mailed or gave them the other invoice showing a iscount (Tp. 140-141, 172, 210, 383-384).

/ The Government's attempt to recover payments made by mis- ake is alternative to its False Claims Act claims except in- ofar as the statute of limitations may have run with respect o certain violations of the False Claims Act. As noted above, he Government also sought to enforce administrative claims or damages, but these are not involved in this appeal.

Mead also claimed that while the invoices he prepared for submission to the Government did not reflect what he received from the farmer or rancher for his materials and services, they nevertheless reflected the "true cost" of the conservation practices (Tp. 153). He explained that he was never informed that it was necessary to show his discounts on the invoices sent to the Government, and that he did not do so "because the Government informed me they wanted a full cost" (Tp. 158).

The evidence with respect to the particular transactions which Mead had with the farmers and ranchers involved in this appeal may be summarized as follows:

Mead and Quine

On January 12, 1959, defendant-appellee Richard Quine filed with the County Committee a request for Federal cost-sharing for the construction of an erosion control dam and diversion ditch on his premises in Moorpark, California (Pltf's. Exh. No. 44). His application was duly approved, and on April 12, 1959, Quine filed an application for payment supported by an invoice prepared by Mead showing that the cost of constructing these practices was $3,956.09 (Pltf's. Exh. Nos. 40-42). The Government paid Mead $2,389.80 on the basis of the application for work performed for Quine under the purchase order plan (Tr. 14, 44-45, 79; Pltf's. Exh. Nos. 37-38). Instead of paying the difference between the total reported cost ($3,956.09) and the Government's cost-share ($2,389.80), which amounted to $1,566.29

rsuant to their agreement Quine paid Mead only $500 in cash
r his work and did not contribute any property or services to
e projects (Tp. 142, 145, 219-221, 262-263, 266).

In a pre-trial statement Quine admitted that "Mead's state-
nt was in excess of the agreed price, so he discounted his
atement to coincide with the previous agreement" (Pltf's. Exh.
, 80). At the trial, however, Quine claimed that he could not
call seeing any invoices from Mead (Tp. 264-265). Quine con-
nded that his pre-trial statement referred to a "discussion
* * long after I had paid Mr. Mead," and that he learned that
e practices cost more than the original estimate after he paid
ad for his work (Tp. 277, 279A).

ad and Johnson

On January 26, 1959, defendant-appellee Alden Johnson filed
request for Federal cost-sharing for the construction of a
version ditch, and for pipe and concrete for a mechanical out-
t, on his Moorpark, California land (Pltf's. Exh. No. 55).
e County Committee duly approved Johnson's request, and on
ril 12, 1959, Johnson filed an application for payment supported
an invoice prepared by Mead showing that the cost of construct-
g these practices was $1,849.75 (Pltf's. Exh. Nos. 50-51, 53).
e Government paid Mead $1,156.90 on the basis of this applica-
on for work performed for Johnson under the purchase order
an (Tr. 17, 79-80; Pltf's. Exh. Nos. 47-49). Instead of paying
e difference between the total reported cost ($1,849.75), and
e Government's cost-share ($1,156.90), which amounted to $692.85,

pursuant to their agreement Johnson paid Mead only $317.40, did not contribute any property or services to the practices (Tp. 171, 173-174, 219-221, 289).

Mead admitted that he gave Johnson a "discount" of $281. but contended that the Government had nevertheless been bill at a "true cost" figure (Tp. 156, 158, 174). In Mead's word "I billed the Government a true cost figure. I accepted fro Mr. Johnson all I could get" (Tp. 156). For his part, Johns stated that he did not recall receiving any invoices from Me and maintained that he was unaware that Mead had given him a discount (Tp. 286-290).

Mead and Violet Mead

On March 13, 1958, defendant-appellee Violet Mead, defe appellee Lennard Mead's mother, filed with the County Commit a request for Federal cost-sharing for the construction of a erosion control dam on her Moorpark, California land. Her a plication was duly approved, and on May 6, 1958, she filed a application supported by an invoice prepared by her son show that the total cost of the practice was $2,888. On the basi of this application, the Government paid Mr. Mead $2,175 for work performed for Violet Mead under the purchase order plan (Tr. 20-21, 47-48, 80; Tp. 183-185; Pltf's. Exh. Nos. 71-73A Mr. Mead did not receive any kind of payment from his mother for this work (Tp. 187).

d and Sence

On February 26, 1959, defendant-appellee Ray R. Sence re-
sted Federal cost-sharing for the construction of a mechanical
let on his premises in Burbank, California. His application was
y approved by the County Committee, and on March 30, 1959,
ce filed an application for payment supported by an invoice
pared by Mead showing that the cost of constructing the
ctice was $4,314.35 (Pltf's. Exh. Nos. 56, 59-60). The Govern-
t paid Mead $2,500 on the basis of this application for work
formed for Sence under the purchase order plan (Tr. 24-25, 46,
66, 79-80; Pltf's. Exh. Nos. 57-58, 61). Although the
ference between the total reported cost ($4,314.35) and the
ernment's cost-share ($2,500) amounted to $1,814.35, Sence
eed to pay Mead only $800 for his work, and purportedly gave
d $172.41 in cash and also paid $627.59 for pipe purchased
used by Mead on the project (Tp. 176, 180, 183, 187, 292,
-297, 367; Def's. Exh. S-B). 7/

Mead admitted that he prepared another invoice showing a
count and mailed it to Sence (Tp. 183). For his part, Sence
tified that Mead billed him for $800; that he never saw the
oice submitted to the Government; and that he merely signed
purchase orders and was not aware that anything on them was
orrect when he signed (Tp. 294-296, 369-370).

7/ The invoice received by the Government stated that Sence had
nished reinforcing steel and forms, but did not mention the
e purportedly paid for by Sence (Pltf's. Exh. No. 60).

pursuant to their agreement Johnson paid Mead only $317.40, a did not contribute any property or services to the practices (Tp. 171, 173-174, 219-221, 289).

Mead admitted that he gave Johnson a "discount" of $281.2 but contended that the Government had nevertheless been bille at a "true cost" figure (Tp. 156, 158, 174). In Mead's words "I billed the Government a true cost figure. I accepted from Mr. Johnson all I could get" (Tp. 156). For his part, Johnso stated that he did not recall receiving any invoices from Mea and maintained that he was unaware that Mead had given him a discount (Tp. 286-290).

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66, 79-80; Pltf's. Exh. Nos. 57-58, 61). Although the
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ernment's cost-share ($2,500) amounted to $1,814.35, Sence
eed to pay Mead only $800 for his work, and purportedly gave
d $172.41 in cash and also paid $627.59 for pipe purchased
used by Mead on the project (Tp. 176, 180, 183, 187, 292,
-297, 367; Def's. Exh. S-B).[7]

Mead admitted that he prepared another invoice showing a
count and mailed it to Sence (Tp. 183). For his part, Sence
tified that Mead billed him for $800; that he never saw the
oice submitted to the Government; and that he merely signed
purchase orders and was not aware that anything on them was
rrect when he signed (Tp. 294-296, 369-370).

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[7] The invoice received by the Government stated that Sence had
ished reinforcing steel and forms, but did not mention the
purportedly paid for by Sence (Pltf's. Exh. No. 60).

Mead and Graham

On March 13, 1958, Gale B. Graham 8/ filed a request for Federal cost-sharing for the construction of an erosion contro dam on his Santa Paula, California land. His application was duly approved, and on May 8, 1958, Graham filed with the Count Committee an application for payment supported by an invoice prepared by Mead showing that the cost of constructing this practice was $3,268. On the basis of this application, the Government paid Mead $2,500 for work performed for Graham unde the purchase order plan (Tr. 28, 48, 80; Pltf's. Exh. Nos. 67-68, 70). The only renumeration Mead received for his materia and services was the $2,500 Federal cost-share; Graham did not contribute anything to the practice (Tp. 201-202).

Mead and Chunn

On April 3, 1959, defendant-appellee Albert Chunn filed w the County Committee a request for Agricultural Conservation P cost-sharing for the construction of an erosion control dam an version ditch on his premises in Moorpark, California. The ap cation was duly approved, and on June 18, 1959, Chunn filed an application for payment supported by an invoice prepared by Me showing that the cost of constructing these practices was $4,5 On the basis of this application, the Government paid Mead $2, for work performed for Chunn under the purchase order plan (Tr 43, 52-53, 79; Pltf's. Exh. Nos. 1-5, 15). Although the diffe

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8/ Graham was not joined as a defendant in this case.

tween the total reported cost ($4,464) and the Federal cost-
are ($2,500) amounted to $1,964, Mead's testimony indicates
at Chunn did not make payments or contributions in that amount
Mead. 9/

Mead admitted that he gave Chunn a cash discount and that
gave Chunn a discounted invoice when he billed the Government
p. 111-112, 116-117, 208-209). Chunn, however, maintained that
was unaware of the discount Mead had given him and that he
d not received a discounted bill from Mead. Chunn claimed that
received a copy of the invoice Mead sent to the Government
ter the purchase orders he signed were sent to the Government
p. 227-229, 232-233).

Mead received no cash payments from Chunn (Tp. 211). He and
unn never spoke to one another with respect to the value of
unn's purported contributions to the practices or with respect
the value of Chunn's purported non-cash payment to Mead for
latter's materials and services (Tp. 208-209, 226-227, 232,
5-406). Mead and Chunn gave conflicting estimates of the
lue of Chunn's purported non-cash payments to Mead. According
Mead, the invoice for $4,464 which he prepared for the
vernment reflected only charges for his own materials and
vices (Tp. 130-132). Mead also asserted that he valued Chunn's
k on the dam at $665, and that he gave Chunn a credit of $600
the use of his pasture (Tp. 112-113). For his part, Chunn
tified that he and Mead had agreed that Mead would receive the
500 Federal cost-share for his materials and services (Tp. 226);
that while he did not participate in computing Mead's $4,464
.l, that bill included his own contributions to the practices
. 405-408). Chunn claimed that his contributions were greater
n those stated by Mead (Tp. 237-238, 394-399; Def's. Exh. C-B).
hough Chunn was admittedly instructed by a County Committee
resentative before he requested Federal cost-sharing to record
costs comprising his own contributions and to list those costs
his bill to the Government, he failed to advise the Government
t he had purportedly furnished materials and services until
l after Mead received the $2,500 Federal cost-share payment
. 227, 244, 400, 404-405).

Mead and Hohn

On January 7, 1957, defendant-appellee A. V. Hohn filed with the County Committee a request for cost-share payments for the construction of an erosion control dam on his premises in Moorpark, California. The application was duly approved, and on April 30, 1957, Hohn filed with the Committee an application for payment supported by an invoice prepared by Mead showing that the cost of constructing this practice was $2,014. The Government paid $1,500 to Hohn on the basis of this application (Tr. 11, 47, 60, 79; Pltf's. Exh. Nos. 17-18, 22). Hohn did not give Mead any cash for his work (Tp. 249-250). Mead in effect admitted that he gave Hohn a discount of $514 in connection with the 1957 work (Tp. 133). He also testified that Hohn contributed an estimated $450 to $540 in equipment and services to the 1957 project, but that these contributions were not listed in the invoice he prepared for the Government (Tp. 119, 121, 132-133).

On January 21, 1958, Hohn filed with the County Committee another request for cost-share payments for the construction of an erosion control dam on his premises. This application was duly approved, and on February 20, 1958, Hohn filed with the Committee an application for payment supported by an invoice prepared by Mead showing that the cost of constructing this practice was $2,580. On the basis of this application, the Government paid $2,064 to Mead for work performed for Hohn under the purchase order plan (Tr. 11-12, 47, 60, 79; Pltf's.

Exh. Nos. 23-25,27). Although the difference between the total reported cost ($2,580) and the Federal cost-share ($2,064) was $516, Mead received no cash from Hohn for this work (Tp. 134-135, 249-250) and claimed only that he received from Hohn a trailer valued at $416, and, possibly, some sheep worth $60 (Tp. 134-137).

On January 8, 1959, Hohn filed with the County Committee a third request for Federal cost-sharing for the construction of an erosion control dam. The application was duly approved, and on March 27, 1959, Hohn filed with the Committee an application for payment supported by an invoice prepared by Mead showing that the cost of constructing this practice was $1,377. On the basis of this application, the Government paid Mead $804.50 for work performed for Hohn under the purchase order plan (Tr. 9-10, 44, 59, 79; Pltf's. Exh. Nos. 28-29,31,33-34, 36). Again, Hohn did not pay Mead any cash for his work (Tp. 249-250). Mead admitted that he gave Hohn a discount of $352.20 in 1959, and that he prepared two invoices for Hohn in that year (Tp. 136-140). Mead claimed, however, that Hohn paid him the difference between the Federal cost-share and his discounted bill by giving him the use of pasture land (Tp. 136-138). 10/

10/ For his part, Hohn testified that he gave Mead some sheep worth $20 each, a trailer worth approximately $1,000, approximately $640 worth of pasture, and the use of equipment and some labor during 1957-1959 as payment for his materials and services (Tp. 248-259).

D. The Decision of the District Court

At the close of the trial, the district court expressed view that the United States had not established any violation of the False Claims Act, and was not entitled to recover unde its alternative theory of mistake (Tr. 449-450). The distric court thereafter entered a judgment that the United States "recover nothing from any of the defendants" (Tr. 108-109).

The district court found, inter alia, that Mead and the farmers and ranchers understood that a portion of the total c of the conservation work was to be charged to the farmer or rancher (Finding 15); that Mead advised the farmers and ranch that he would perform conservation work for them "at a cost commensurate with" their ability to pay, and would, in certai cases, accept non-cash payments (Finding 17); that in cases where the work was done under such agreement, Mead prepared, and sent to the farmer or rancher involved, a separate invoic showing that Mead was giving the farmer or rancher a "discoun and that the farmer or rancher was paying "less than his pro- portionate share of the total cost of the work" performed by Mead (Finding 18); and that the documents filed with the Unit States "did not reflect the arrangements between the defendan Mead and the other defendants * * *" (Finding 20) (Tr. 103-10

Despite these findings, the district court concluded tha none of the defendants filed a claim against the United State which was false within the meaning of the False Claims Act; that no payments were made by the United States to any of the

defendants under a mistake; and that the United States was not entitled to recover any amount from any of the defendants (Tr. 106). [11/] These conclusions, apparently, were based on the court's additional findings (Tr. 103, 105):

> 14. In no instance in this case was the information submitted on Forms ACP-245 or ACP-250 by any of the defendants incorrect or false insofar as it reflected a price per unit of the work to be performed other than the actual price or an amount of units other than the number of units of such work actually performed and on which reimbursement was to be based.
>
> * * * * *
>
> 21. Based upon the Forms ACP-245 and ACP-250 introduced in this case, an agreed percentage of the total cost, as properly reflected thereon and properly chargeable to the United States of America was paid on behalf of the respective landowners.
>
> 22. In no instance has it been shown herein that any payment actually made by the United States pursuant to said forms was in excess of the fair market value of the work done on behalf of the farm owner and pursuant to the Agricultural Soil Conservation Program or in excess of the fair value of the United States' agreed share of the cost.
>
> 23. In no instance was the actual value of the work done shown to be less than the value represented by the defendant MEAD.

11/ As already noted, this appeal does not question the district court's additional denial of the Government's administrative claims against the defendants (Tr. 105-106).

STATUTE AND REGULATIONS INVOLVED

1. The False Claims Act provides in pertinent part:

R.S. § 3490 (1878):

> Any person * * * who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "CRIMES," shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing of such act * * *.

R.S. § 5438 (1878):

> Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, * * * shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars. 12/

12/ The civil portion of the False Claims Act has been codif[ied] at 31 U.S.C. 231. The criminal portion has been altered (se[e] 18 U.S.C. 287 and 1001), but R.S. § 3490 incorporates, uncha[nged] the criminal provisions as set out in R.S. § 5438. Rainwate[r] United States, 356 U.S. 590, 592-593.

2. The regulations governing the Agricultural Conservation Program for 1959 (23 Fed. Reg. 5247 et seq.) provide in pertinent part:

§ 1101.1001 General program principles. The 1959 National Agricultural Conservation Program has been developed and is to be carried out on the basis of the following general principles:

(a) The national program contains broad authorities to help meet the varied soil and water conservation problems of the Nation. State and county committees and participating agencies shall design a program for each State and county. Such programs should include any additional limitations and restrictions necessary for the maximum conservation accomplishment in the area. The programs should be confined to the soil and water conservation practices on which Federal cost-sharing is most needed in order to achieve the maximum conservation benefit in the State or county.

* * * * *

§ 1101.1011 Rates of cost-sharing. (a) The maximum Federal cost-share for each practice shall be the percentage of the average cost of performing the practice considered necessary to obtain the needed performance of the practice, but which will be such that the farmer or rancher will make a substantial contribution to the cost of performing the practice. Rates of cost-sharing shall not be in excess of 50 percent of the average cost of performing the practices, except that:

* * * * *

§ 1101.1027 Conservation materials and services--

* * * * *

(b) Cost to farmer or rancher. The farmer or rancher will pay that part of the cost of the material or service, as established under instructions issued by the Administrator, ACPS, which is in excess of the Federal cost-share attributable to the use of the material or service or, upon request by the farmer or rancher and approval by

> the county committee, the farmer or rancher will pay that part of the cost of the material or service which is in excess of the farmer's or rancher's Federal cost-share for all components of the practice which will likely be completed during the program year. The Federal cost-share increase on the amount of the Federal cost-share so determined may be advanced as a credit against that part of the cost of the material or service required to be paid by the farmer or rancher.
>
> * * * * *

The regulations governing the Agricultural Conservation Progr for 1957 and 1958 are identical to the above-quoted provision

SPECIFICATION OF ERRORS

1. The district court erred in failing to hold that the defendant-appellee Mead violated the False Claims Act by know ingly making false bills and claims for the purpose of obtain payment of false claims upon or against the United States.

2. The district court erred in failing to hold that the United States sustained damages by reason of the aforesaid violations of the False Claims Act.

3. The district court erred in failing to hold that the United States is entitled to recover damages from defendant-appellee Mead for Federal cost-share payments made by mistake

4. The district court erred in failing to hold that the other defendants-appellees violated the False Claims Act by knowingly making false claims upon or against the United Stat

5. The district court erred in failing to hold that the United States is entitled to recover damages from the other defendants-appellees for Federal cost-share payments made by mistake.

13/ See Sections 1101.801(a), 1101.811(a), and 1101.827(b) o the 1957 Regulations, 21 Fed. Reg. 5035, 5036, 5038; and Sec. tions 1101.901(a), 1101.911(a), and 1101.927(b) of the 1958 Regulations, 22 Fed. Reg. 6483-6484, 6485, 6486-6487.

SUMMARY OF ARGUMENT

The undisputed evidence in this case establishes that the fendant-appellee Mead prepared invoices which intentionally erstated Mead's actual charges to farmers and ranchers for his nservation materials and services, and that these false invoices, bmitted in support of the farmers' and ranchers' applications r payment of Federal cost-shares, were used by the Government computing the amount of its share of the cost of those prac-ces. Thus, under the plain terms of the False Claims Act, fendant-appellee Mead knowingly made a false bill or claim or the purpose of obtaining or aiding to obtain the payment * * of" a false claim, and was, therefore, liable under the t for statutory forfeitures for each such violation and for uble the amount of damages which the United States sustained ereby.

The district court seems to have absolved defendant-appellee ad (and the other defendants-appellees) from any liability der the False Claims Act on the theory that the payments made the Government did not exceed the "fair market value" of ad's work or the "fair value" of the Government's agreed share the cost, and that in no case was the "actual value" of the rk done less than the value represented by Mead. In so ruling, e court plainly erred, for the amount of the Federal cost-shares yable under the conservation programs here involved clearly de-nded solely upon the cost of the approved conservation practices, d was in no way related to "value."

The district court's theory as to "value" comes down to contention that the United States did not sustain any actual damages by reason of Mead's misrepresentations. In this respe too, the court erred. First, the Supreme Court has clearly he that the United States may recover statutory forfeitures under the False Claims Act whether or not it sustains actual damages Second, the United States did incur actual damages by virtue o Mead's misrepresentations. For Mead's false invoices caused t Government to pay out more money than it would have paid if a true invoice had been submitted, and Mead's scheme permitted t farmers or ranchers to pay less than their proportionate share of the cost of the practices.

Thus, the district court clearly erred in failing to hol (1) that defendant-appellee Mead violated the False Claims Act (2) that the United States sustained actual damages by virtue of such violations; and (3) that the Government is entitled to recover payments made by mistake.[14/]

With respect to the defendants-appellees other than Mead there is also no question that they filed false claims with th United States and thereby caused it to sustain damages. In Mead's case, it is undisputed that the invoices prepared by hi intentionally overstated the costs of the practices, and it is

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14/ As stated above, the mistake claims are alternative to the claims under the False Claims Act except insofar as the statut of limitations may have run with respect to certain violations of the False Claims Act.

hus clear that he "knowingly" made false bills and claims for he purpose of obtaining payment of false claims upon or against he United States. While the district court made no specific indings as to the knowledge of the other defendants-appellees, nd most of them professed a lack of knowledge, we submit that, n the record in this case, the conclusion is inescapable that hey "knowingly" made false claims, and that they, too, are iable to the United States for statutory forfeitures and double amages under the False Claims Act. 15/

ARGUMENT

I

DEFENDANT-APPELLEE MEAD VIOLATED THE FALSE CLAIMS ACT BY KNOWINGLY MAKING FALSE BILLS AND CLAIMS FOR THE PURPOSE OF OBTAINING PAYMENT OF FALSE CLAIMS UPON OR AGAINST THE UNITED STATES. THE GOVERNMENT SUSTAINED ACTUAL DAMAGES BY REASON OF THOSE VIOLATIONS, AND IS ALSO ENTITLED TO RECOVER PAYMENTS MADE BY MISTAKE.

A. The False Claims Act is broadly phrased to reach any erson who makes or causes to be made "any claim upon or against" he United States, "knowing such claim to be false * * *," or ho knowingly makes or causes to be made a false "bill, receipt, oucher, roll, account, claim, certificate, affidavit, or leposition" for the purpose of "obtaining or aiding to obtain he payment or approval of" a false claim. R.S. § 5438 (1878). or the objective of Congress in enacting the statute "was broadly o protect the funds and property of the Government from fraudent claims * * *." Rainwater v. United States, 356 U.S. 590, 592.

15/ The district court also had no basis for rejecting the Government's claim against the other defendants-appellees for payments

As the Supreme Court recently emphasized, "In the various cont in which questions of the proper construction of the Act have presented, the Court has consistently refused to accept a rigi restrictive reading, even at the time when the statute imposed criminal sanctions as well as civil [Footnote omitted]." Unit States v. Neifert-White Co., No. 267.--October Term, 1967, decided March 5, 1968, 36 U.S. Law Week 4189, 4190. Thus, in Neifert-White, the Supreme Court held that the False Claims Ac "reaches beyond 'claims' which might be legally enforced, to a fraudulent attempts to cause the Government to pay out sums of money." Ibid.

In the case at bar, there can be no doubt that there wer fraudulent attempts, ultimately successful, to cause the Gover ment to pay out excessive sums of money. For the invoices whi Mead prepared in support of the farmers' and ranchers' applica tions for payment of their Federal cost-shares were used by th Government in computing the amount of its share of the cost of the practices it had previously approved. See, e.g., Tp. 52, 74, 204. And, as the evidence in this case conclusively demon strates (supra, pp. 5-13), and as the district court found, (supra, p. 14), those invoices intentionally overstated Mead's actual charges to the farmers and ranchers for his materials a services. Thus, in the language of the False Claims Act, Mead knowingly made a false bill or claim "for the purpose of obtai ing or aiding to obtain the payment * * * of" a false claim, a

as, therefore, liable under the Act for statutory forfeitures of $2,000 for each such violation and for double the amount of damages the United States sustained thereby.

B. The district court seems to have absolved Mead (and the other defendants-appellees) [16] from any liability under the False Claims Act because it found that the payments made by the United States did not exceed the "fair market value" of the work done by Mead or the "fair value of the United States' agreed share of the cost" (Finding 22); and that in no case was the "actual value" of the work done less than the value represented by Mead (Finding 23) (Tr. 105). In so ruling, the court clearly erred. For the "fair market value" and "actual value" of Mead's work, or the "fair value" of the Government's agreed share of the cost, are utterly immaterial under the cost-sharing programs involved in the instant case. As the regulations plainly provide, (supra, pp. 17-18), the amount of the Federal cost-share payable under the 1957, 1958, and 1959 programs depended solely upon the cost of the approved conservation practices, and was in no way related to "value." The record in this case clearly establishes that Mead's invoices overstated the actual costs of the practices (supra, pp. 5-13), and that these inflated invoices were the basis upon which the Government computed the allowable Federal cost-share payments (see, e.g., Tp. 52, 74, 204).

16/ The liability of the other defendants-appellees is discussed in Point II, infra.

The district court's theory as to "value" comes down to th contention that the United States did not sustain any actual damages by reason of Mead's misrepresentations. As we demonstra below, the Government did in fact sustain actual damages in the case at bar. We note, however, that the False Claims Act expres provides that any person who violates its provisions "shall forfeit and pay to the United States the sum of two thousand dollar and, in addition, double the amount of damages which the United States may have sustained by reason of" the violation. R.S. § 3490 (1878). As the Supreme Court has held, the United States may therefore recover statutory forfeitures whether or not it sustains actual damages. Rex Trailer Co. v. United States, 350 U.S. 148, 152-153, fn. 5; United States ex rel. Marcus v. Hess, 317 U.S. 537, affirming, 41 F. Supp. 197, 218 (W.D. Pa.). See, also, United States v. Rohleder, 157 F. 2d 126 (C.A. 3); Toepleman v. United States, 263 F. 2d 697 (C.A. 4), certiorari denied, 359 U.S. 989; United States v. Rainwater, 244 F. 2d 27 (C.A. 8), affirmed, 356 U.S. 590; Fleming v. United States, 336 F. 2d 475 (C.A. 10), certiorari denied, 380 U.S. 907. 17/

17/ The court's theory as to "value" may also have stemmed from the fact that the purchase order form (ACP-250) contained a reference to "fair price or sales price" and a certificate by th farmer or rancher that "the price paid to the vendor does not ex ceed the difference between the fair price, if applicable, and t payment by the Government." However, as explained at trial, the references to "fair price" were placed in the form during wartim solely to insure that the contractor did not receive excess profits (Tp. 317-318). As we have seen (supra, p. 23), the amou of the Federal cost-share payable under the 1957-1959 agricultur programs here involved depended solely upon the cost of the (Con

C. The district court found that the information submitted on the payment application (ACP-245) and the purchase order (ACP-250) forms was not "incorrect or false insofar as it reflected a price per unit of the work to be performed other than the actual price or an amount of units other than the number of units of such work actually performed and on which reimbursement was to be based" (Finding 14) (Tr. 103). The court also found that, based on these two forms, "an agreed percentage of the total cost, as properly reflected thereon and properly chargeable to the United States of America was paid on behalf of the respective landowners" (Finding 21) (Tr. 105). We note initially that these findings seem to contradict the court's other findings, viz., that Mead sent to the farmers and ranchers a separate invoice showing that they were receiving a "discount" and paying "less than * * * [their] proportionate share of the total cost of the work" performed by Mead (Finding 18); and that the documents filed with the United States "did not reflect the arrangements between the defendant Mead and the other defendants * * * " (Finding 20) (Tr. 104). 18/

(Cont.) practices, and the inflated invoices submitted by Mead were the basis upon which the Government computed the allowable Federal cost-share payments.

It need only be added that the district court's findings with respect to "value" are based solely upon Mead's conclusory and self-serving testimony that the invoices he prepared reflected the "true cost" of the conservation practices and that the Government "got its money's worth" (Tp. 153, 382-383). The Government witness, Eldridge R. Cornell, merely testified that he could not express an opinion on the question of "value" (Tp. 98-100).

18/ The court's findings were actually prepared by counsel for defendants-appellees (Tp. 450-451).

In any event, the district court's findings (Nos. 14 and 21) are clearly contrary to the undisputed evidence in this case. To take a specific example, [19/] defendant-appellee Mead prepared an invoice showing that he was constructing an erosion control dam on the property of Violet Mead, his mother, at a total cost of $2,888--7,600 cubic yards of earth at 38 cents per cubic yard. This invoice was false since Mr. Mead actually made no charge at all to his mother, and, in effect, was seeking to charge for his work only the amount of money he could obtain from the Government. The false invoice was submitted to the County Committee in support of Violet Mead's application for Federal cost-sharing. For the particular practice involved the Government's cost-share was computed on the basis of the lesser of 80% of the total cost, or 30 cents per cubic yard of earth moved times the number of cubic yards, with a $2,500 maximum. The Government technician certified that the work had been completed according to specifications and contained 7,250 cubic yards. The Government thereafter paid Mr. Mead the sum of $2,175 on the purchase order plan, computed as follows: 30 cents per cubic yard times 7,250 cubic yards equals $2,175, which is less than the amount, $2,310.40, arrived at by multiplying 80 percent times $2,888 (the cost figure submitted by Mr. Mead). If the Government had been correctly informed that Mr. Mead was only seeking to

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19/ See Tr. 20-21, 47-48, 80; Tp. 183-185, 187; Pltf's. Exh. Nos. 71-73A.

recover the Federal cost-share ($2,175), it would only have paid out $1,740--80 percent of $2,175.[20] Thus, in this instance, the Government made an overpayment to defendant-appellee Mead in the amount of $435 ($2,175 less $1,740). Moreover, in addition to causing the Government to pay out more money than it would have paid if a true invoice had been submitted, Mr. Mead's scheme plainly frustrated the cost-sharing regulations, since instead of paying her proportionate share of the cost of the practice, Violet Mead paid nothing.[21]

It is also evident from an examination of the other transactions set out above (supra, pp. 6-13) that in other instances as well Mead's invoices similarly overstated his costs, thereby (1) causing the Government to pay out more money than it would have paid if a true invoice had been submitted, and (2) permitting the farmer or rancher to pay less than his proportionate share of the cost of the practice.

In sum, the district court clearly erred in failing to hold that the appellee Mead violated the False Claims Act by knowingly making false bills and claims for the purpose of obtaining

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20/ 30 cents per cubic yard times 7,250 cubic yards equals a greater sum, viz., $2,175.

21/ As just seen, Mr. Mead is not absolved from liability under the False Claims Act by virtue of the fact that the Government technician certified the number of cubic yards in the completed practice. Under the Federal cost-share computation, Mr. Mead's false invoice plainly caused the Government to pay out more money than it would have paid if a true invoice had been submitted.

payment of false claims upon or against the United States, and in failing to hold that the United States suffered damages by reason of these violations of the False Claims Act. 22/

II

THE OTHER DEFENDANTS-APPELLEES VIOLATED THE FALSE CLAIMS ACT BY KNOWINGLY MAKING FALSE CLAIMS UPON OR AGAINST THE UNITED STATES. THE GOVERNMENT SUSTAINED ACTUAL DAMAGES BY REASON OF THOSE VIOLATIONS, AND IS ALSO ENTITLED TO RECOVER PAYMENTS MADE BY MISTAKE.

With respect to the defendants-appellees other than Mead, there is also no question that they filed false claims with the United States and thereby caused it to sustain damages. In Mead case, it is undisputed that the invoices prepared by him intentionally overstated the costs of the practices, and it is thus clear that he "knowingly" made false bills and claims for the purpose of obtaining payment of false claims upon or against the United States. While the district court made no specific findings as to the knowledge of the other defendants-appellees, and most of them professed a lack of knowledge, we submit that, on the record in this case, the conclusion is inescapable that they "knowingly" made false claims upon or against the United States, and that they, too, are liable to the United States for statutory forfeitures and double damages under the False Claims Act.

22/ Even if the United States was not entitled to recover statutory forfeitures and double damages under the False Claims Act, the district court had no basis for rejecting the Government's attempt to recover against Mead payments made by mistake. The mistake claims are alternative to the claims under the False Claims Act except insofar as the statute of limitations may have run with respect to certain violations of the False Claims Act.

Mead testified that he usually sent a copy of the invoice he prepared for the Government to the farmer or rancher, and that, at about that time, he also mailed or gave the farmer or rancher the other invoice showing a discount (Tp. 140-141, 172, 210, 383-384). The Government witness, Mr. Cornell, testified that the forms (ACP-245 and ACP-250), which contained Mead's inflated cost figures, were signed by the farmer or rancher after completion of the practice (Tp. 47, 61, 80, 86). And the district court found that the farmers and ranchers understood that part of the total cost of the conservation work was to be born by them (Finding 15); and that Mead sent to the farmers and ranchers a separate invoice reflecting the fact that they were receiving a "discount" and paying "less than * * * [their] proportionate share of the total cost of the work" performed by Mead (Findings 17-18) (Tr. 103-104). On this record, we submit that the only reasonable inference is that the other defendants-appellees were fully aware that the applications filed by them constituted false claims upon or against the United States, and that they, too, are liable to the United States for statutory forfeitures and double damages under the False Claims Act. See United States v. National Wholesalers, 236 F. 2d 944, 950 (C.A. 9), certiorari denied, 353 U.S. 930. 23/

23/ As in the case of defendant-appellee Mead, the district court also improperly rejected the Government's claim against the other defendants-appellees for payments made by mistake.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

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MARCH 1968

CERTIFICATE

I certify that, in connection with the preparation of th brief and appendix, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing brief and appendix is in full compliance with those rules.

Leonard Schaitman

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AFFIDAVIT OF SERVICE

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) ss.
CITY OF WASHINGTON)

LEONARD SCHAITMAN, being duly sworn, deposes and says:

That on March 27, 1968, he caused one copy of the foregoing Brief and Appendix for the United States to be served by air mail, postage prepaid, upon counsel for appellees:

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Subscribed and Sworn to before
me this 27th day of March, 1968.

Angelina Johns
NOTARY PUBLIC

My Commission expires April 14, 1972.

A P P E N D I X

APPENDIX PURSUANT TO RULE 18--2(f) OF THE COURT'S RULES

Pursuant to Rule 18--2(f) of the Court's rules, the followin is a table of page references to the record where the various exhibits were identified, offered, and received in evidence or rejected:

EXHIBIT	IDENTIFIED	OFFERED	RECEIVED OR REJECTED
Plaintiff's:			
1-74, 77-78, 81-83	Tp. 24	Tp. 24-26	Tp. 24-26
42-A	Tp. 146	Tp. 147	
51-A	Tp. 169	Tp. 172	Tp. 172*
75-76	Tp. 24	Tp. 24-26, 411	Tp. 24-26, 411
79	Tp. 24	Tp. 290	Tp. 290
80	Tp. 24	Tp. 278	Tp. 279A
84	Tp. 230		
85	Tp. 339	Tp. 343, 351	Tp. 362
86-88	Tp. 339	Tp. 343	Tp. 343
* Admitted against Mead only.			
Defendants':			
C-A	Tp. 389	Tp. 393	Tp. 394
C-B	Tp. 389	Tp. 393	Tp. 394
C-C	Tp. 389	Tp. 393	Tp. 394
J-B	Tp. 214	Tp. 225	Tp. 225
Q-B	Tp. 213	Tp. 225	Tp. 225
QJ-A	Tp. 213	Tp. 214	Tp. 214
QJ-B	Tp. 411-412	Tp. 412	Tp. 412
S-A	Tp. 181		
S-B	Tp. 371, 413	Tp. 372, 413	Tp. 372, 413